

Update on new regulations and important tax policies

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1. Circular No. 68/2019/TT-BTC guiding the implementation of Decree No. 119/2018/ND-CP on electronic invoices

On 30 September 2019, the Government officially issued Circular No. 68/2019/TT-BTC ("Circular No. 68") guiding the implementation of some articles of Decree No. 119/2018/ND-CP on electronic invoices. This circular will officially take effect from 14 November 2019. Some notable new points in this circular are as follows:



About application period and content of electronic invoices:

- From 1 November 2020, businesses, economic entities, other organizations, households and individuals doing business must register to apply electronic invoices according to the instructions in this Circular;
- The issuance date of electronic invoices is determined based on the date of seller's electronic signature which is displayed in the format of day, month, year and in accordance with the instructions on the time of making invoice (Item e, Clause 1, Article 3)
- Names of goods and services: The names of goods and services must be shown in Vietnamese. In case of selling goods are in various categories, the goods names shall show details of each category (for example: Samsung phone, Nokia phone, etc.) (Point d.1, Clause 1, Article 3)
- Some fundamental changes in the samples, invoice symbols, the detailed characteristics, specifications of the typical goods as prescribed by law.



Issuance date of electronic invoices:

- The issuance time of e-invoices is no more than 5 days from the date that the air transport service receipt issued on the website and e-commerce system (Point d, Clause 2, Article 4);
- For real estate business, infrastructure construction, construction of houses for sale, purchase but not yet transfer of ownership or right to use: The time of making electronic invoices is the date of collecting cash or according to payment agreement in the contract. In case of ownership or right to use transfer: The time of issue e-invoices is in according to Decree No. 119 (Point c, Clause 2, Article 4);



About application of electronic invoices and handling error invoices:

- Enterprises whose equity is below VND15 billion and having one of below signs is required to use electronic invoice with tax authority code: do not have the ownership of factory, warehouse, stores; have suspicious bank transactions; earns more than 50% revenues from another enterprise whose owner is parent, spouse, sibling, or having cross ownership; fails to submit the tax declaration dossier on time; changes the address of its business location 2 times or more in 1 year (Point b, Clause 3, Article 6);
- There are 2 types of invoices with code issued each time by tax authorities: sales invoice and VAT invoice (Clause 4, Article 6).
- With error in buyer's name and address but correct tax code, the seller shall notify the buyer of the error in the invoice and submit form No. 04 attached to Decree No. 119 to the tax authority. Other errors must be included in a report to certify errors, submit form No. 04 and make a replacement invoice (Clause 2, Article 11) for invoices with code of the tax authority.



2. Circular No. 60/2019/TT-BTC on customs valuation of imported goods

On 30 August 2019, the Ministry of Finance issued Circular No. 60/2019/TT-BTC amending and supplementing some articles of Circular No. 39/2015/TT-BTC on customs valuation of exported and imported goods. This Circular takes effect from 15 October 2019.

This Circular provides some notable new guidelines, which are mainly among the 3 groups of issues, including the General Regulations; principles and methods of determining the value of exported and imported goods; and Price database. Within the scope of this newsletter, we point out some key changes as follows:



Regarding the principles and methods of customs valuation of imported goods:

- Amend details regulations on the value situations of control and operation software, which must be added or not added to the transaction value of machinery and equipment (in which the application software value is not added to the value of intermediary device); declaration procedures for customs declarers, inspection and handling order of customs authority.
- Amendment and supplement regulations on proofs of the existence of a special relationship affects the buying and selling prices in imported goods transactions.
- Amendment and supplement regulations on copyright and license fees.
- Amendment and supplement in detail for the case that the reference price in the List of exported and imported goods posing the risk of price cannot be used to determine the customs value of goods, which is consistence with the principle of using the list of exported and imported goods posing the risk of price.
- Amendment and supplement the regulations on determination of price in some cases of specific imported and exported goods.



Regarding the price database:

- Supplement provisions on the making and usage of the List of enterprises with customs valuation risk, under which the price inspection will be carried out according to the List of exported and imported goods having risks of customs value and List of enterprises having risks of customs valuation.

3. Circular No. 62/2019/TT-BTC regulating on the determination of the origin of exported and imported goods

On 5 September 2019, the Ministry of Finance issued Circular No. 62/2019/TT-BTC on amending and supplementing some articles of Circular No. 38/2018/TT-BTC of the Minister of Finance on determining the origin of exported and imported goods. This Circular takes effect from 21 October 2019.

Accordingly, this Circular adds clause for refusal of certification of goods origin as follows (Clause 3, Article 1):



At the time of carrying out the import procedures, there are documents certifying the goods origin, but the customs declarers do not declare the reference number and the date of issue; no certificate of origin is available but the customs declarers do not declare late submission of the document on the import customs declaration as prescribed.



In case the declarer declares late submission of documents certifying goods origin but additionally declares and submits documents passed the deadline, the customs authority rejects the documents of origin certification as prescribed.

The Circular also amends and supplements the regulations on determining the origin of exported and imported goods to apply specially incentive tax rates under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership and the Trans-Pacific Partnership (CPTPP).

4. Circular No. 06/2019/TT-NHNN on foreign exchange management for foreign direct investment activities in Vietnam

The State Bank of Vietnam has just issued Circular No. 06/2019/TT-NHNN (“Circular No. 06”) on 26 June 2019, providing guidance on foreign exchange control for foreign direct investment activities in Vietnam. Accordingly, this Circular will take effect from 6 September 2019 and replace the Circular No. 19/2014 /TT-NHNN dated 11 August 2014 of the State Bank.

A new point worth noting in Circular No. 06 is that compared to the current regulations, the State Bank has clarified the definition of foreign direct investment enterprises. This Circular also extends the regulations on opening direct investment accounts of foreign-invested enterprises, foreign investors participating in BCC contracts, implementing PPP projects.

In addition, Article 13 of Circular No. 06 also stipulates that an enterprise whose foreign investor has opened and used an indirect investment capital account to contribute capital, purchase shares, or contribute capital at the enterprise, resulting the foreign investor owns 51% or more of the charter capital, must open direct investment capital accounts under the provisions of this Circular.

In addition, Circular No. 06 also clarifies the general principle that foreign investors may contribute capital in foreign currencies and Vietnam Dong, according to the investor's capital contribution in the Investment registration certificate, Establishment License and operation in accordance with specialized law, Notice of satisfying the conditions for capital contribution, share purchase, acquisition of foreign investor's capital contribution, PPP contract signed with Competent state authorities and other documents proving the foreign investors' capital contribution in accordance with the provisions of law.



5. Import duties and VAT on leased machine, equipment and machinery repair services for export processing enterprises

The General Department of Customs issued Official Letter No.1966/TCHQ-TXNK dated 5 April 2019 regarding import duties and VAT for export processing enterprises.

Accordingly, in case an export processing enterprise provides a mold agreed in a processing contract with domestic enterprises for processing, the temporarily imported into Vietnam molds shall be exempt from import tax.

However, if an export processing enterprise lends molds to a domestic enterprise to produce components supplied to the company under an agreement for leased machinery and equipment, when temporarily imported into Vietnam, it is not eligible for import tax exemption.

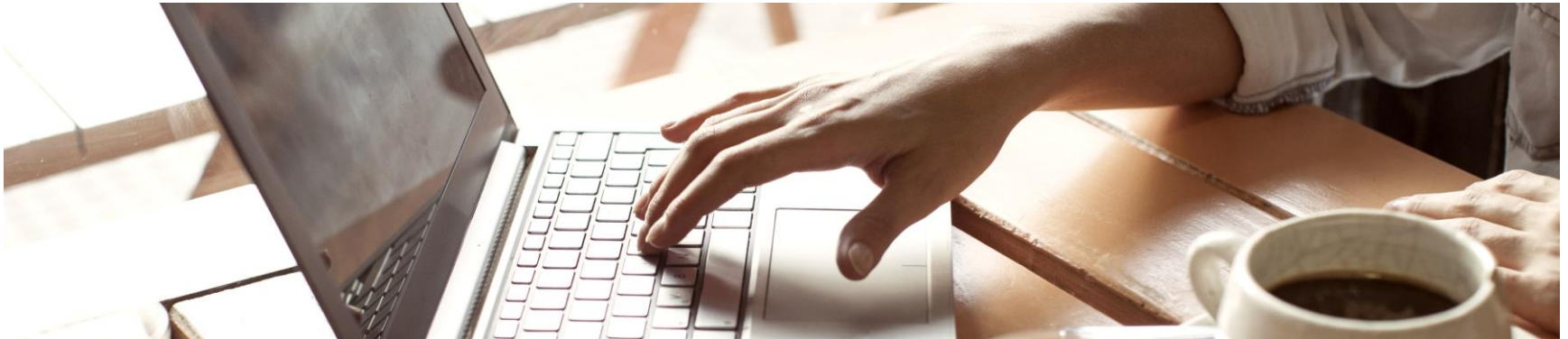
In addition, this Official Letter also specifies the case of mold repair service provided by domestic enterprises to export processing enterprises, which is performed and consumed outside the non-tariff area (repaired at the premises of domestic enterprises), is not subject to the VAT rate of 0%.



6. Lunch allowances must be included in taxable income for PIT purpose if the company organizes shift meals and lunch meals

On 23 October 2019, the Hanoi Tax Department issued Official Letter No. 80201/CT-TTHT on the PIT policy with lunch and shift-meal. According to this official letter, if the company organizes mid-shift meals and lunches for employees in the form of meal-set purchases, this amount is not included in the employees' taxable income.

However, in addition to organizing shift meals and lunches for employees, the company also pays lunch allowance in cash for employees, this cash allowance must be included in the employees' taxable income which is subject to PIT in accordance with regulations.



Contact

Please contact our professional advisors at Grant Thornton Vietnam for assistance with taxation, accounting, transfer pricing, labour, investment and customs as well as other legal issues you may have during your business operation.

Please visit our website to view more information www.grantthornton.com.vn

Head Office in Hanoi

18th Floor, Hoa Binh International Office Building
106 Hoang Quoc Viet Street, Cau Giay District, Hanoi, Vietnam
T + 84 24 3850 1686
F + 84 24 3850 1688

Hoang Khoi

National Head of Tax Services
D +84 24 3850 1618
E khoi.hoang@vn.gt.com

Nguyen Dinh Du

Tax Partner
D +84 24 3850 1620
E du.nguyen@vn.gt.com

Kaoru Okata

Director – Japanese Desk
D +84 24 3850 1680
E kaoru.okata@vn.gt.com

Vishwa Sharan

Director – Transfer Pricing
D +84 327 345 053
E Vishwa.Sharan@vn.gt.com

Ho Chi Minh City Office

14th Floor, Pearl Plaza, 561A Dien Bien Phu Street
Binh Thanh District, Ho Chi Minh City, Vietnam
T + 84 28 3910 9100
F + 84 28 3910 9101

Nguyen Hung Du

Tax Partner
D +84 28 3910 9231
E hungdu.nguyen@vn.gt.com

Tran Nguyen Mong Van

Tax Director
D +84 28 3910 9233
E mongvan.tran@vn.gt.com

Masato Karoji

Director – Japanese Desk
D +84 28 3910 9135
E masato.karoji@vn.gt.com

Valerie – Teo Liang Tuan

Tax Partner
D +84 28 3910 9235
E valerie.teo@vn.gt.com

Nguyen Thu Phuong

Tax Director
D +84 28 3910 9237
E thuphuong.nguyen@vn.gt.com

Lac Boi Tho

Tax Director
D +84 28 3910 9240
E tho.lac@vn.gt.com